ASSESSMENT OF RAILWAYS.

SOME OBSERVATIONS

ON THE

JUDGMENT

DELIVERED IN

THE COURT OF QUEEN'S BENCH,

On Saturday, the 18th of February,

IN THE CASE OF

THE QUEEN *v.* THE SOUTH-EASTERN RAILWAY COMPANY.

With an Appendix

CONTAINING THE CASE AND JUDGMENT.

BY

J. FISHER,

OF THE GREAT WESTERN RAILWAY.

LONDON:

JAMES BIGG AND SONS, 53, PARLIAMENT STREET;

W. MAXWELL, 32, BELL YARD, LINCOLN'S-INN.

1854.

Price Two Shillings.

OBSERVATIONS

ON

THE JUDGMENT

IN

THE QUEEN *v.* THE SOUTH-EASTERN RAILWAY COMPANY.

THE difficulties by which the subject of the assessment of railways was supposed to be surrounded have certainly not been lessened by the Judgment which, in a divided court, the Judges of the Queen's Bench have delivered in this case.

The questions were three in number, though in effect but two, the second question put to the court being a combination of the first and third, and presenting only the alternatives of each, but no different inquiry.

The first question before the court was in substance this:—Is an annual payment, secured to be made over a long term of years, to be taken as conclusive evidence of such annual value as, by the Parochial Assessment Act, overseers are required to ascertain for the purpose of the assessment of the property in respect of which the payment is made?

The second question was, Whether the rate ought to be made irrespective of rent paid by the company, and of the value of the Reading and Reigate Line as increasing the traffic on the Main Line?

And the third question was, in fact, the alternative of the latter portion of the second, Whether the respondents were entitled to take into consideration, in their assessment, the value of the line to the appellants, as an integral part of the South-Eastern Railway, in addition to the net profit, as derived from the traffic passing through the parish of Dorking?

In answering the first question, the Judges, although somewhat

differing in their views, and in the strength with which they expressed them, arrived at a common conclusion, by which the law may be considered as decided; and it is so difficult to imagine four Judges arriving at any other opinion, that it is matter of surprise that the question should ever have been submitted to them; but as it is no uncommon thing to find overseers believing in, and acting on, the notion that rent paid is an absolute criterion of value, as a correct and legal decision upon the point, and as a settlement of a question leading frequently to differences and to appeals, the Judgment will be of great importance; more especially in those parts of the country where, from its mineral or manufacturing character, rateable property is of a speculative nature, and is often the subject of leases highly beneficial or the reverse. The value of this decision is, therefore, by no means confined to the particular property the assessment of which was the subject of the case before the court.

The assessment of the line in question *as an integral part*, (as the phrase has been understood,) of the South-Eastern Railway, is of course intended and expected to have some effect on the rateable value of the particular portion of property in question, as however the interference thus caused in the present mode of rating one constituent part of a railway must be met by some compensating alterations in the sums assessed elsewhere, the effect of the decision, therefore, on the actual money payment to the parishes will not, or ought not, to be material; but it is to be feared that it will open a new field for disagreement between railway companies and parishes where, perhaps, the assessment has been regarded as settled, and, as in many cases is the fact, where a tacit agreement to that effect exists, for which it will be difficult to find a remedy in Courts of Law, the question being of a nature, which the Court of Queen's Bench expressly say they cannot be called on to interfere in. It is this part of the Judgment, on account of the difficulties it creates, and the utter impossibilities which it requires to be performed, which it is the object of these remarks to bring before those who may be either instrumental or interested in getting it reviewed. Our objections then are not so much that

the effect will either increase or diminish the aggregate amount of assessment on railways, as that the attempt to solve a perfectly insoluble question will entail on each party much useless expense and trouble.

We do not understand the court to intend by its decision that the whole of a system of railways in the occupation of a Company, call them what we may—trunk lines, branch lines, or loop lines, leased, guaranteed, or amalgamated lines, are in effect to be assessed at more than their entire value, that is to say, more than the value at which they might be assessed if they were the subject of but a single assessment, such as in fact they are to the property and income tax; and the reference by one of the learned Judges to the relative interest of Amwell and Islington, and of the Chief Justice to a "deduction," shows, that whatever is to be given to one class of parishes, is intended should be surrendered by the other. It will not be contended by parish officers that the sum of the value of the separate parts is greater than the value of the whole, and it becomes, therefore, only a question of division, of apportionment; and, although, it appears by the Judgment, that certain parts are be assessed at all they are worth by the modes which are to be applied to other parts, that is, on an estimate of rental to be ascertained from the net earnings in the parish, and that then something else is to be added as a value which these parts confer on or cause to arise out of the other parts, namely, their supposed value as feeders, it must follow of necessity, that a corresponding and equivalent reduction of rateable value is somewhere to be found, and of right that such reduction is somewhere to be made.

Now what are the distinctive features which are to mark the parts to give and the parts to receive? The former, in language not very precise, are called "Branches," the latter "Main Line," and by a metaphor, as was said by a learned Judge, the former are called "Feeders;" no corresponding term has as yet been applied to what must, to sustain this figure, be regarded as the recipient portions of the line, but it is clear that a receiving character must be supposed to belong to them.

The use of these terms in the Judgment seems to us the foundation upon which its fallacy rests, the arguments deal with these words rather than with things.

We have said that the terms employed to designate these two kinds, if two kinds they be, of railways, are not precise in their meaning; might it not be said that they are utterly undefinable —what is a branch? what is not a feeder? Branch lines (to give as nearly as possible what we conceive to be a popular notion of them) are those which run out of other lines, and which have been made not so much for the local traffic existing or to be called into existence upon them, as for the ultimate profit to be derived by the occupiers of the line in conjunction with which they are made, by the accession of traffic on to rails already laid, and into carriages already running; but will such a descriptive definition as this meet and settle the claims which parish officers will set up to have particular railways considered as belonging to the class "feeders," or of Companies to be allowed reductions on lines of the other kind? Where will the receivers be found admitting themselves to be of that exclusive character? Where are the parish officers who will say we are indebted for the traffic through our parish in part to a line in this county, and in part to a line in another? and although 6,000*l.* a mile is annually carried in our parish, at an expense of 3,000*l.*, we are not entitled to regard the 2,000*l.* as net earnings there, because some of that traffic was produced by the making of another piece of railway fifty miles away, and which traffic would not have passed through our parish if that line had not been made? It will not be difficult to find the "feeders," but who will confess themselves to be solely "receivers?"

It is clear that a branch railway must be defined, and a main line or trunk line must be defined also, if the mode hitherto acted upon, of taking as the basis of parochial value parochial earnings be broken in upon; and that of taking somewhat more in one case, and somewhat less in another, be legalised; there must be a legal distinction discernible, if possible, by parish officers, and certainly by magistrates; and for this legal distinc-

tion we must look, if any where, to the Court of Queen's Bench, before we employ an "accountant;" and, considering who will be interested in, and entitled to act upon it, or to dispute it, it should be definite and clear.

The case states that "the Reading, Guildford and Reigate Line brought a great deal of *additional* traffic to the Main Line of the South-Eastern Railway Company, and the latter Company thus derived benefit from the Reading, Guildford and Reigate Line, as a feeder to the Main Line, in respect of traffic conveyed upon that line."

It is obvious, from the use of the very loose expression "a great deal," that the framers of the case experienced the difficulty which, we think, always must occur, and which it will be impossible to surmount, when any practical approximation to the amount of such *additional* traffic is attempted to be ascertained.

The overseers of one parish and the magistrates of one division or county may say this or that line feeds another, and those interested in, or called on to decide in the reciprocal cases, will come to that conclusion which is most in favour of their own line; and why not? when all is reciprocity—all is interchange; when feeding, and being fed, are the processes universally in action. And yet there will be no tribunal to which the Railway Companies may go to escape from under the harrow of this litigation.

With the single desire to prevent what it seems this Judgment will cause, a new mass of litigation before the most unsatisfactory tribunals, we would endeavour to find some criterion to act upon in distinguishing between the two species of lines of Railway referred to; but at every attempt we are taught more and more that the apparent difficulty is an impossibility. We turn to the London and North-Western Line; the line to Birmingham may be the main line by priority of existence, but the line through the Trent Valley to Crewe, by majority of traffic; the line on to Liverpool may be main line, because it was part of the original and independent Grand Junction, or it may be a branch, like those to Chester and to Manchester, or it may be a "feeder" to that parent of all lines, the Liverpool and Manchester; but while the

lines to Aylesbury, Bedford, and Northampton, may, in the hands of their parish officers, enjoy the privileges to be given to "feeders," where are we to fix on the corresponding receivers, who are not only not to have those privileges, but out of their local earnings, to concede them? A man at Aylesbury goes to Northampton; he feeds the main line from Tring to Blisworth, and why not the "branch" from Blisworth to Northampton? and if so, is not the Northampton branch, in this case, a receiver? And when that same man returns, does he not give the same character to the line from Tring to Aylesbury?

We go to the Great Northern; that company made a railway from London by Peterborough and Lincoln to York; they made another line from Peterborough by Newark and Grantham to Retford, going thence on to York, and they rent, under a perpetual lease, another line from Boston, by Louth, to Great Grimsby. Are the lines by Newark, and Lincoln, and Louth, to be all feeding or all receiving, or are some of one character and some of the other? It is clear they all feed the rails from Peterborough to London, but it is also equally clear they are all fed by the rails from London to Peterborough.

Nor does the Great Western aid us in this search for a distinctive character. The line to Bristol is ordinarily called the main line; those to Cheltenham and Birmingham, to Windsor, to Basingstoke, to Hungerford, to Warminster, and to Frome, branches, but do they not reciprocally feed and feed upon each other; one portion of a railway brings a passenger on to another portion in the morning, that other portion takes him in the evening to the same portion on which he started in the morning to return. A railway is made from Chippenham to Westbury, where it divides at a large angle, going westwards to Frome, and eastwards to Warminster. The line between Westbury and Chippenham will claim to be a feeder to the main line, and the privilege of a like claim *against* that line can hardly be denied, either to the parishes between Westbury and Frome, or Westbury and Warminster, so that a parish assessing the company between Westbury and Chippenham will have to inquire:—

First. What are the entire earnings on the line in the parish?

Secondly. What number of passengers have gone from this line on to the main line at Chippenham, who *would not have gone on to the main line if this line had not been made?* (and for which purpose, we apprehend, some little power of inquiry will be requisite.)

Thirdly. How far have such passengers travelled, and what has been the earnings of the company on the main line, by reason of their so travelling? These last two inquiries will be for the purpose of ascertaining the *addition* to be made to the actual parochial earnings.

Fourthly. What has been the number of passengers who have come through the parish in question by the lines from Warminster and from Frome respectively, in consequence of those lines being made to bring them; and

Fifthly. How far have they travelled through the parish in question, and what has been the earnings in respect of them.

These last inquiries will be necessary to ascertain to what extent the rating parish must allow a *deduction* for the claims of the respective parishes between Warminster and Frome, to be feeders to the, to them, main line from Westbury to Chippenham.

If any thing were required to show the utter impossibility of framing such a definition as is requisite under this Judgment, or to show that the inquiries that may be raised under its shadow may be infinite, we might recur to a difficulty we have just glanced at. The value of the line called the Reading and Reigate Line, as a feeder to the main line of the South-Eastern Railway, is to be ascertained: We find that, A. takes a ticket at Dorking, and goes to Dover, the overseer of Dorking says the Company earned 1*s.* on the branch line, but it earned 12*s.* or 15*s.* on the main line, because the branch line performed the functions of a feeder to the main line; but how is this to be known, who can ascertain whether the journey to Dover would not have been undertaken so far as Reigate by another mode of conveyance? Take another case, a passenger from the west of England to the

continent, leaves the Great Western Railway at Reading, and takes the Reading and Reigate Line, by which, having arrived at Reigate, he feeds the main line of the South-Eastern on his way to Dover, who is to tell us that, if this "feeder" had not had existence, the same passenger would not have continued his journey by the Great Western to London, and there taken the South-Eastern Line to Dover; thus travelling over its whole length, instead of so much only as lies between Reigate and Dover; surely, in this case, the feeder has lost its character, and has robbed its parent of some four or five shillings.

The like is the case on the Great Western; before the opening of the *feeder* from Hungerford, all the up traffic from Marlborough went to Swindon, and thence to London by the Main Line; but the Berks and Hants Line, from Hungerford to Reading, was made, and the traffic from Marlborough flowed into it, and fed the Main Line at Reading, forty-two miles nearer London. If there be any principle in the Judgment, surely it would sanction an inquiry into the number of passengers, who, being brought on to the Main Line, at a point forty-two miles nearer London, would, if that branch had not been made, have travelled so much more over the Main Line; and it would permit that *feeder* to be debited in account with the parishes on it with the results of its predatory course.

Take the case of the Bristol and Gloucester Railway. It was an independent line. It was taken into the "Midland" system. It might have been taken by the Bristol and Exeter. By this Judgment it is, we presume, a feeder of the Midland Railways, in the other case, it would have been a feeder of the Western Lines. But, in point of fact, it is a feeder of both, and of one as much as of the other; and yet has, in neither case, more of that character than the two continuous railways from Gloucester to Birmingham, and from Bristol to Exeter, bear to it.

Two adjoining independent railways may be of very different values and importance, if they become related in the characters of lessor and lessee, or amalgamated: it is generally assumed that the major absorbs the minor, and the minor will be called the "feeder;"

but we suppose no impossible case, when we assume, that the minor Company may take up the larger undertaking, and if so, how are we to avoid the seeming absurdity of saying, that the rateable value of the several portions of the whole conjoint property, in one occupation, is dependent on whether A. become tenant of B., or B. of A.

The South Wales Railway made their line to Swansea; they then continued it by a line running out of the line so made, about two miles short of Swansea, on to Caermarthen, a distance of thirty miles. If a parish on that portion of the railway should contend that it is a branch, and entitled to the privileges of a feeder, who is to say, with authority, that it is not? It may be, as it is, called the Main Line, but it will be difficult to maintain that the *name* of a property given to it by its owner, can or ought to affect its liability to local taxation.

The South-Eastern Company took the Croydon Line. Is the old South-Eastern Railway proper a feeder to the Croydon; or, the Croydon a feeder to the South-Eastern; or, both to the Greenwich Line.

No reference has been made to the question of *gross* or *net* earnings from the traffic supposed to be brought by feeders, but it is clear that much might be said on both sides of an inquiry, as to whether the accession of a certain amount of traffic might not take place on to a line without involving any additional expense, and such a question might be raised so as to support a claim ranging between an allowance for average expenditure, and any possible degree of approximation to a clear net profit, and might be combated throughout all the same degrees.

The cases which have been mentioned as illustrations of the argument, have been selected chiefly from the railways of the south, or of the least complicated character; but if the complex relations of some of the Central and Northern Railways had been attempted to be shown, they would more strongly, though perhaps less clearly, have displayed the difficulties, the contradictions, and the utter impossibilities resulting from, and involved in, this remarkable Judgment.

Let us, however, inquire, whether it is not altogether founded on a misconception; and first, are we quite certain that the condition required is not, in fact, already fulfilled. The court is asked to say, whether "the value of the line, as an integral portion of the South-Eastern Railway," may be added to "the net profits as derived from the traffic passing through the parish of Dorking?" Now, what is the measure of value of an integral portion of the South-Eastern Railway? Is it not the net profits as derived from the traffic passing over such portion—How should we get at the value of any integral portion, but by the process adopted on other integral portions, where we get at the rateable value through the earnings. The process of evolving the rateable value is everywhere the same: "the net profits, as derived from the traffic," are found, and by the proper legal computations the value is arrived at. Are we not calling one thing by two names? If Dorking, with its traffic, were on the main line, it would have all and no more than Dorking is entitled to now. And if a reason why one integral portion is to be treated differently from another integral portion is to be found in the Judgment, we think it is to be found there alone.

The terms "main line" and "branch" appear to have been used without due inquiry as to their precise meaning, and without considering whether there is, in point of fact, any such difference as is supposed. A supposed analogy is put by one of the learned Judges, which clearly shows that his mind, at least, was influenced by a misconception of the true relative character of the several portions of a system of railways, worked together, and under one management. Mr. Justice Coleridge refers, as an analogous case, to the aqueduct called "The New River." Amwell, he says, feeds Islington, and so in truth it does, but the illustration fails when we come to make the comparison. Did it occur to that able judge, that while Islington is to Amwell a bourne from which no traveller returns, the Amwell of railways receives from its Islington all that it supplies; that in fact, there is, in his case, no reciprocal benefit to the feeder; while, in the

one before him, the action and reaction are mutual, and differ in no ascertainable degree.

If a branch does feed the main line, the main line must return the benefit: and this is true, not only of main lines and branches with relation to each other, but of all railways and parts of railways. Are not in fact all parts of the railway system throughout the kingdom, nay, throughout the world, in a greater or less measure feeding all other parts?—bringing to and receiving from each other the benefits of reciprocal trade; and if the claim of the branches be maintained against the main lines, the parishes on the latter may challenge the former to show a mile of railway which may not have a claim against them.

If the Judgment could be understood to mean that *any* railway bringing traffic on to *any* other railway ought to be considered as a branch to that railway, and entitled to credit in the valuation of it as a feeder, the effect would be no other than that of adding to and deducting from an account a vast number of sums, but in the aggregate equal in amount on both sides; for, in point of fact, the to-and-fro traffic is always found to be equal if taken over a time sufficient to comprise a cycle; and the objection would, in that case, simply be, that the rule would be the occasion of a vast amount of useless trouble; but we do not see any ground for so interpreting it.

The fundamental error is the attempt to distinguish between main line and branch, for the purpose of finding a different rule of law for each, and the result is, the requirement of an impossibility.

If this paper should meet the eye of any one of those learned Judges who participated in the Judgment delivered in this case, and who have evidently given this subject much attention, let us ask him to put to himself the simplest case which could arise under his interpretation of the law, and to try to obtain a solution—he will not find it "Accountant's" work. The branch to Windsor will be said to be a feeder to the Great Western Railway: a train arrives at Paddington, with 100 passengers, five of whom come from Windsor; their fares are 2*s.* 6*d.* each, of which the 6*d.* was earned on the branch, and the

2*s.* on the main line. If it be assumed that the five times 2*s.* is contributed, by means of the branch, as a feeder to the main line, and is, consequently, to be credited to the parishes on the branch, it must also be assumed that none of them would have travelled from Windsor to Slough to reach the railway by any other conveyance, but would have stayed at home, or come to town by another route; and the parishes on the Windsor branch will contend for this, but will the parishes on the main line concur in the correctness of the assumption? They will say, show us that you alone could bring this traffic. And then let us ask his Lordship, if this be a question for an Accountant? The learned Judge, who suggested that, if a case should again be brought up, it should state "what *is* the railway profit arising out of a parish, and rateable within it," saw, that it must be entirely matter of opinion, in which we have nothing but the most vague probabilities and conjectures for a base.

The relation between the main line and the branches, in truth, reminds us of that which exists between the belly and the members; and the absurdity of the attempt to ascertain and define what is the amount of dependence of one portion of the body upon the rest has been exposed from the time of Æsop.

Let us however assume no doubt to remain as to the source to which the increased traffic is to be attributed; and let us suppose the case of a parish on a main line, with a certain regular amount of earnings, which has been ascertained and taken as the basis of assessment; a branch line becomes annexed, and the traffic from it coming over the main line parish raises the earnings twenty per cent., the effect of this judgment, it is assumed, will be to give the railway through that parish no additional value for the purpose of assessment, and yet we cannot possibly avoid the conclusion, that if the main line were to be let, it would command a higher rent. The tenant would take the profit, and give the rent, but the tax *is not* to fall on him in respect of it; the tax falls on the occupier of the branch. The tenant of the branch does not take the profit, and it cannot be supposed that the rent he pays is influenced by the consideration of a benefit he does not derive; and yet the

anomaly follows, that the tax on the occupier is in respect of it. Every test that we propose to ourselves seems rather to expose more palpably the fallacies on which this decision rests, than to solve the difficulties of the question.

And if the parishes differ, and differ as they most certainly will, as parish officers and all others do in whose hands is left a question resting on opinion only, and which affects their interests, with whom will they contend? not with each other, but each with the Railway Company.

This brings us back to what we have stated to be the chief purpose of this paper, namely, to point out the probability of the mass of litigation that will arise, if the Judgment should stand, and from which the Railway Companies will have no escape, nor any common tribunal to come to, as a court of appeal. The overseers of a rural parish may conceive, and the magistrates of a rural county may decide, that their local line is a feeder to the main line traversing the metropolitan district, and that the whole, or certain proportions of the traffic flowing from it, are attributable to it in that character.

The magistrates of a county through which this traffic flows on in its approach to the terminus may hold a different opinion, they may think that, whatever may be the convenience of the branch line to those who use it, the whole or some of them would have come to the point of junction if it had not been made, and they may confirm an assessment in which no allowance or a very inadequate allowance may have been made for that which, being allowed in the distant parish as an earning, ought undoubtedly to be allowed as a debit against the actual earnings here; but these are questions in which the Court of Queen's Bench cannot interfere, they are said to be matters of fact. If Courts of Quarter Sessions differ, there is no court of appeal; it may be easy perhaps to show that one must be wrong, and in a matter so speculative, the probabilities are that both will be wrong; but there is no authority which can compare the two decisions, and see if the parts exceed or fall short of the whole, and where the error lies; that which is most complex and of the widest range is to be dealt with piecemeal, and no provision is

made that parts separately produced shall fit and make a symmetrical whole. And here for one moment we would advert to the absolute infinity of the questions and calculations, which must be put and made before this Judgment can be carried out. Those acquainted with the laws of arithmetical progression will have some notion of their number when they consider that every parish, on every part of a system of railway in one occupation, will to some extent be feeding upon and fed by every other parish in that aggregation of lines! Well might the Lord Chief Justice "earnestly dissuade" parish officers from ever making a claim under this head, unless, where upon clear evidence the claim can in point of fact be established; and we can only say that if parish officers will act upon this advice, the Judgment may safely be left to remain a dead letter in the reports of the court.

It is not supposed that when the judges of England see that they have pronounced an erroneous judgment on a matter of a technical, and it must be confessed perplexing, nature, and the misconception into which they have fallen is apparent, that they are not ready to admit their miscarriage, and as speedily as possible to review their decision. The Court of Queen's Bench, no doubt, finds the recurrence of these questions apparently interminable, and their solution difficult, but we do not suppose that tribunal disposed to hand over questions involving interests of so much moment to courts of subordinate jurisdiction. We know the grave consideration the judges have given to them, and we have confidence that, if it should appear to them that their judgment has been based on a misconception, or that it will create useless contention, or require impossibilities, and work injustice, they will not hesitate to review it; and we, therefore, urge on the Railway Company, on whom the first experiment may be made, to test the application of this novel rule, according to the suggestion of Mr. Justice Erle, by calling on the parish officers to show "what is the railway profit arising out of their parish which is rateable within it;" and to obtain the opinion of the Court of Queen's Bench on the principle they may adopt as their guide in the process.

APPENDIX.

In the Queen's Bench.

THE QUEEN
against
THE SOUTH-EASTERN RAILWAY COMPANY.

This is a SPECIAL CASE stated by consent for the Opinion of the Court, pursuant to Orders of The Right Honourable JOHN LORD CAMPBELL, *dated respectively the 28th day of June,* 1850, *and the 30th day of May,* 1853, *upon two several Appeals by the* SOUTH-EASTERN RAILWAY COMPANY *to the Quarter Sessions of the County of Surrey, against Two several Rates for the Relief of the Poor of the Parish of* DORKING, *upon the grounds hereinafter mentioned.*

CASE.

THE South-Eastern Railway Company was established and incorporated under that name by an Act of Parliament made and passed in the 6th year of the reign of his late majesty King William the Fourth, which authorized the Company to make a Railway from the London and Croydon Railway to Dover, to be called the South-Eastern Railway.

The Reading, Guildford and Reigate Railway Company were incorporated under that title by "The Reading, Guildford and Reigate Railway Act, 1846," and were thereby authorized to make a Railway from the Great Western Railway, at or near the Reading Station of such Railway in Berkshire, to join the South-Eastern Railway in the parish of Reigate in Surrey.

The same statute enacts, that it shall be lawful for the Reading, Guildford and Reigate Railway Company to demise or lease the Reading, Guildford and Reigate Railway to the South-Eastern Railway Company, for such term and upon such conditions as shall be or as shall have been agreed upon between the said companies, and to carry into effect any arrangement not inconsistent with any of the provisions thereinbefore contained that shall be or shall have been agreed upon between the said companies, subject to the provision next thereinafter contained, which is to the effect that the Reading,

Guildford and Reigate Company should proceed with the construction of the entire line from Reading to Reigate, so that the same should be completed within the time limited by the Act, and that it should not be lawful for them to enter into any agreement with the South-Eastern Railway Company for the abandonment of any portion thereof.

By Articles of Agreement under the respective common seals of the said Companies, made the 11th day of May, 1847, it was agreed between the said Companies that the said Reading, Guildford and Reigate Railway Company should grant to the said South-Eastern Railway Company a Lease at a rent equal to £5 : 10*s.* per cent. per annum on the Capital raised and to be raised by the Reading, Guildford and Reigate Railway Company, not exceeding £600,000, without any participation in profits by the said last mentioned Company, by way of commutation of the rent of £4 : 10*s.* per cent. per annum and one half of the profits, as provided by an Agreement dated the 2nd day of April, 1846, and made between the South-Eastern Railway Company and the Provisional Directors of the Reading, Guildford and Reigate Railway Company (not then incorporated); and that the portion of the line between Dorking and Reigate should be included in the said lease; and also that when the Reading, Guildford and Reigate Railway Company should have made the said Reading, Guildford and Reigate Line, they should grant and the said South-Eastern Railway Company should accept a lease thereof for 1000 years on the terms in such agreement mentioned.

The Reading, Guildford and Reigate Line was completed and opened for traffic throughout from Reigate to Reading, before the 15th day of March, 1850, on which day a Lease was granted by the said Reading, Guildford and Reigate Railway Company to the said South-Eastern Railway Company for the term of 1000 years, at the yearly rent of £33,000, clear of all rates and charges except Income Tax.

The lease also provided that the South-Eastern Railway Company should pay interest not exceeding £4 per cent. per annum on a Bond Debt of £200,000, incurred in making the Reading, Guildford and Reigate Line, which interest amounts to the sum of £8,000 a year.

The South-Eastern Railway Company are bound by the lease to keep the line of Railway in repair.

When the lease was granted the South-Eastern Railway Company were bound by the Agreement of the 11th day of May, 1847, to take the lease.

A copy of this Lease and a copy of the Agreement of the 11th day of May, 1847, together with copies of the Acts of Parliament herein referred to, accompany this case and are to be deemed part thereof.

The Reading, Guildford and Reigate Railway mentioned in the said lease forms a junction with the South-Eastern Railway at Redhill, in the parish of Reigate, in the county of Surrey, and runs thence to Reading

in the county of Berks; but it does not form a junction with the Greast Western Railway.

The Reading, Guildford and Reigate Line is worked by the South-Eastern Railway Company in connection with the Main Line from London to Dover and the branches connected therewith, and the South-Eastern Railway Company are the sole occupiers of the whole of the said lines, on which they carry on exclusively a business as carriers of passengers and goods.

There are forty-six miles of Railway between the junction at Redhill and Reading, but only forty miles of this Railway are demised by the said lease; six miles of the line, between Guildford and Ash, belonging to the South-Western Company, and to the use of which the South-Eastern Railway Company are entitled on payment of toll, pursuant to an agreement between the Reading, Guildford and Reigate Company and the South-Western Railway Company.

The Reading, Guildford and Reigate Line, leased to the South-Eastern Railway Company, passes for a length of 341 chains through the parish of Dorking, in the county of Surrey.

By a rate or assessment for the relief of the poor of the said parish of Dorking, and for other purposes chargeable thereon according to law, made on the 6th day of December, 1849, after the rate of *2s.* in the pound, the South-Eastern Railway Company were assessed as occupiers of the portion of the said Railway in Dorking parish at a rateable value of *£2,228 : 2s. 6d.*, and the rate demanded of the South-Eastern Railway Company on that assessment amounts to *£222 : 16s. 3d.*

For the purposes of this Case the said rate is to be taken as made after the date of the said lease, the South-Eastern Railway Company not disputing that they were equally liable at the time of the making of the said rate as if the said lease had been then made.

The South-Eastern Railway Company duly appealed against the said rate to the Quarter Sessions held in and for the county of Surrey next after the making thereof, and gave due notice of their said appeal.

The grounds of such appeal and the objections of the Appellants to the said rate are, that is was unequal, unfair and incorrect; because the Appellants are thereby assessed at a greater sum than they were by law liable to be assessed at; because they were thereby over-rated in respect of the yearly value of the lands, tenements and premises occupied by them in the said parish; because they were over-rated in comparison with the rest of the rate payers in the said parish; and because the said rate or assessment was in other respects informal, illegal, unequal, partial, oppressive and unjust.

The Appeal was duly respited until the Sessions held next after the 28th day of June, 1850, and on that day the said first mentioned Order of the Right Honorable John Lord Campbell, respecting the

said Appeal, was made by consent, whereby it was amongst other things ordered, that the parties shall be at liberty to state the facts of the Case in the form of a Special Case for the Opinion of the Court of Queen's Bench, they agreeing that a Judgment in conformity with the decision of the said Court, and for such Costs as the Court shall adjudge, may be entered on motion by either party at the Court of Sessions of the Peace to be held in and for the County of Surrey next or next but one after the decision of the Court of Queen's Bench shall have been given.

The Respondents had in and by the hereinbefore mentioned rate assessed the South-Eastern Railway Company, in respect of the said portion of their railway in the parish of Dorking, upon a valuation founded upon the said rent of £41,000 paid by the said Company under the said lease for the Reading, Guildford and Reigate Line; and if the said rent is the proper criterion of the rateable value, then the said assessment of £222 : 16*s.* 3*d.* is correct.

The gross receipts of the South Eastern Railway Company in respect of the Reading, Guildford and Reigate Line, less the proper deductions, did not in the year for which the rate was made amount to £41,000 less the Statutory deductions under the Parochial Assessment Act.

The Reading, Guilford and Reigate Line brought a great deal of additional traffic to the main line of the South-Eastern Railway Company, and the latter Company thus derived benefit from the Reading, Guildford and Reigate Line as a feeder to the main line in respect of traffic conveyed upon that line.

The Reading, Guildford and Reigate Line, if in the market, might be an object of competition, in consequence of the spirit of rivalry existing between the South-Eastern Railway Company and other Railway Companies, the traffic on the main lines of which would be increased by the possession and control of the Reading, Guildford and Reigate Line.

By an Act of Parliament made and passed in the fifteenth year of the reign of her present Majesty Queen Victoria, called "The South-Eastern and Reading, Guildford and Reigate Railways Amalgamation Act, 1852," and which Act is to be considered as part of this case; it was in the 3rd section enacted "That from and after the passing of this Act the Reading Company shall be dissolved, and, subject to the powers and provisions of this Act, all the undertakings, estates, property and effects whatsoever of that Company already demised to the South-Eastern Company, and all the Capital and all other the property and effects and all the estates rights and interests, powers, authorities and privileges, both at law and in equity and otherwise howsoever, of the Reading Company shall respectively remain and be transferred to and vested in the South-Eastern Company absolutely

and for ever, and shall be deemed part of the original undertaking of that Company."

And in the 27th section of the same Act it was also enacted, "That from and after the passing of this Act the whole of the undertaking of the South-Eastern Company shall be charged with the payment to the Shareholders in the Reading Company, their successors, executors, administrators and assigns, of 40,000 perpetual annuities of £1 : 0*s.* 6*d.* each (making the aggregate perpetual annuity of £41,000), by way of commutation for the yearly rent and other yearly sums payable under the recited Lease by the South-Eastern Company to or for the benefit of the Reading Company.

By another rate or assessment for the relief of the poor of the said parish of Dorking and for other purposes chargeable thereon according to law, made after the passing of the said last-mentioned Act of Parliament, namely on the 12th day of November, 1852, after the rate of 1*s.* 8*d.* in the pound, the South-Eastern Railway Company are assessed as occupiers of the said Railway in Dorking parish at a rateable value of £5,040 : 10*s.*, and the rate claimed of the South-Eastern Railway Company on that assessment amounts to £420 : 0*s.* 10*d.*

The South-Eastern Railway Company duly appealed against the said last-mentioned rate to the Quarter Sessions held in and for the County of Surrey next after the making thereof, and duly gave notice of such Appeal; and the grounds of Appeal and the objections of the Appellants to the said last-mentioned rate are the same as the grounds of appeal and objections to the rate first hereinbefore mentioned.

The last mentioned appeal has been duly respited, and on the 30th day of May, 1853, an Order of the Right Honorable John Lord Campbell was made respecting such Appeal, whereby it was amongst other things ordered, that the parties should be at liberty to state the facts of the case in the form of a Special Case, for the Opinion of the Court of Queen's Bench, they agreeing that a Judgment in conformity with the decision of the said Court, and for such Costs as the Court shall adjudge, may be entered on motion by either party at the Court of Sessions of the Peace to be held in and for the County of Surrey next or next but one after the decision of the Court of Queen's Bench shall have been given.

The whole of the facts and circumstances previously stated as to the first mentioned rate are applicable to the case of the last mentioned rate, with the exception of the said Lease, which is applicable only to the said first mentioned rate, and the said last mentioned Act of Parliament is applicable only to the said last mentioned rate.

The questions for the opinion of the Court are—

First. Whether the Appellants are properly assessed in the said rate of the 6th December, 1849, at the sum of £222 : 16*s.* 3*d.*; and in the said rate of the 12th November, 1852, at the sum of £420 : 0*s.* 10*d.*

Second. Whether the Appellants are liable to be assessed in respect only of the net profit derived from the Traffic passing through Dorking, irrespective of any rent paid by the Company and the value of the Reading, Guildford and Reigate Line as increasing the traffic on the Main Line.

Third. Whether the Respondents are entitled to take into consideration, in their assessment, the value of the Line to the Appellants as an integral part of the South-Eastern Railway, in addition to the net profit as derived from the traffic passing through the parish of Dorking.

If the Court should be of opinion that the Rent under the Lease is the proper criterion of the rateable value as regards the first-mentioned assessment made during the existence of the lease, then the assessment is to be confirmed.

If the Court should be of a different opinion, then the matter is to go back to the Quarter Sessions, or an arbitrator, to be appointed by Counsel on both sides, to determine the proper amount of assessment in conformity with the opinion of the Court upon the second and third questions, and the rate is to be amended accordingly.

If the Court should be of opinion, that, as regards the last-mentioned assessment, either the rent reserved under the said Lease (notwithstanding such rent had ceased before the making of such last-mentioned assessment), or the Annuity payable under the said last-mentioned Act of Parliament, is the proper criterion of the rateable value, then the same is to stand confirmed.

If the Court should be of a different opinion, then the same course is to be taken as with respect to the first rate.

In the Queen's Bench.

WESTMINSTER HALL,
February 18th, 1854.

THE QUEEN

against

THE SOUTH-EASTERN RAILWAY COMPANY.

JUDGMENT.

MR. JUSTICE CROMPTON.—The first question is, whether the two assessments in question are proper? And it is stated that they are to be regarded as proper, and are to be confirmed if the rent, as to the first rate, or the rent or annuity as to the second, is the proper criterion of the rateable value. I understand by the question, as explained by this statement, that we are to say whether, in our judgment, these assessments were properly made by taking the rent before the statute of amalgamation, or the rent or annuity after that act, as the sole criterion from which the assessment is to be made?—and I am of opinion that it can by no means be so considered.

Even as to the first rate, where the smaller line has not become a portion of the other, the rent can only be taken as matter of evidence of the rateable value, or of the rent at which it might be expected to be let under the Parochial Assessment Act, and all the circumstances under which that rent may at first have been given, or which may have subsequently affected the value of the portion of the line, must be taken into account, so as to see what would be the rent that might be expected to be got from it at the time when the assessment is made. Under neither of the rates can the rent or annuity be taken to be the sole criterion from which the assessable value can be arithmetically deduced.

I therefore answer the first question as explained by the subsequent matter, by saying, that in my opinion these assessments are not to be confirmed.

Secondly, I think that in strictness the value of the branch, as a feeder, is to be taken into account in ascertaining the rateable value.

It is profit derived from the occupation of the land, and it seems to me impossible to say that the value to the person willing to take the lines, or the rent likely to be got from them, would not be increased by the advantage of this line to, and from its being a feeder of, the larger Railway. The value of the land in the parish is increased and enhanced by its being useful, as increasing the profit that may be made in another place, and I think that the rateable value within the parish may clearly be enhanced by matter in another parish.

It is true that, in the mode of taking the account of the earnings in the parish and of the deductions to be made according to the mode mentioned in the recent cases of Reg. *v.* The Great Western Railway Company, no item is mentioned for the value in respect of being a feeder to the main line; and it may be difficult and often not worth while to introduce this new element into the account, but on principle the rateable value, according to the rule in the Parochial Assessment Act, seems to me affected by the value of the line in the particular parish as a feeder of the main line.

I answer the second question, therefore, in the negative; and as I suppose that the third question refers to the value of the branch line as a feeder, no other peculiar value than as a feeder being suggested, the third question seems in effect another way of putting the second; and I answer it in the affirmative, that the Respondents are entitled, in making their assessment, to take into consideration the value as a feeder to the main line.

Mr. Justice Erle.—In this case I consider the material facts to be, that one rate was made while the Reading and Reigate Railway was under lease, and the other after it was amalgamated with the South-Eastern Railway; and the material questions to be, what is the principle for ascertaining the rateable value of the portion of the line in the parish of Dorking for each rate? The parish contending that the rent of £41,000 paid at the time of the first rate, and the annuity of £41,000 paid since the amalgamation should be taken as the rateable value of the whole line to be apportioned among the different parishes; the Railway contending that the net earnings of the portion of the line in the parish should be taken as the rateable value.

As the rate since the amalgamation is the most important, being the guide for future rates, I take that first.

By the amalgamation, the Reading and Reigate Line, which was a feeder, has become part of the South-Eastern Line, as much as if it formed part of the original construction; so that now either all is line or all is feeder, the amalgamation in this case being in no respect distinguishable from the amalgamation of the Newbury and Hungerford Line with the Great Western, In the matter of Tilehurst, 15 Q. B. Rep. There the principle for rating a railway, by taking the

net profit of the whole line as the rateable value of the whole, and apportioning that rateable value among the parishes in proportion to the net earnings in each parish, was sanctioned and acted on. This principle was decided to be correct, after long consideration, in Regina *v.* The Brighton, Regina *v.* The South-Eastern, and Regina *v.* The South-Western Railways, 20 Law Journal, and I extract the principle as expressed in each of those cases [Sessions Cases, 15 Q. B. Rep. 313.]

In Reg. *v.* Brighton and South Coast Railway, 20 L. J. Magistrates' Cases, p. 130, the parish of Croydon claimed a right to rate the Company on the principle of parochial earnings; that is, at such a sum as a solvent tenant would pay as annual rent for the stations and portion of the line of Railway within the parish, regard being had to the net revenue earned in the parish, and this principle was affirmed by the Court. In the case of the South-Eastern Railway, in the same authority, the parish of Westbeer claimed to rate the Company for a portion of the branch to Ramsgate on the mileage principle, of dividing the rateable value of the trunk and branches according to the distance in each parish. It was found, that the traffic upon the main or trunk line was greater than upon any of the branches. The Company contended for the principle of parochial earnings, namely, that they ought to be rated at such sum as a tenant might be expected to give as annual rent for that portion of the branch Railway situate within the parish of Westbeer, regard being had to the portion of profit earned by the portion of the Railway within that parish; such rent being ascertained by taking the gross annual receipts from the portion of the Railway situate in Westbeer, (such gross receipts being ascertained by taking a proportion of the fare paid by every passenger who has, during the year, been carried by the Company over any portion of the line in Westbeer, such proportion bearing the same ratio to the whole sum paid by such passenger for the whole distance travelled by him as the distance in Westbeer bears to the whole distance travelled by him, and calculating goods on the same principle,) and taking from such earnings the deductions allowed by the Parochial Assessment Act: held that this principle of estimating the gross profits was correct, and that deductions were to be on the parochial principle also. It is said in arguing (page 140), here is a parish including a portion of a branch line, upon which it is found that the profits fall far short of those earned on the main line. The profits on which the rate is to be calculated are those arising within the rating parish—the respondent parish has no right to any of the profits earned on the main line. The judgment of the Court supports this argument. In Regina *v.* The Midland Railway, in the same authority, p. 140, the parish of Basford was rated on the mileage principle. The Company contended, that the rate ought to be estimated by reference solely to the net pro-

fits earned by the Railway within that parish, without any reference to the net profits earned elsewhere, or to the rateable value of any portion of the Railway lying in any other parish. The judgment affirms this principle. In Regina *v.* The Great Western Railway Company, exparte Tilehurst, 21 L. J. Mag. Cas. p. 84, the question was, how the expenses of a Railway were to be apportioned? And it was held that they also, where they are local, are to be apportioned to the parish where they arise, and deducted from the gross earnings in the parish calculated, on the principle laid down in the foregoing cases. Nothing more than the gross earnings in the parish were allowed to the parish, although it was found that it was profitable to the Company, as proprietors of the entire Great Western Railway, by reason of the increased traffic brought thereby upon the main line, and the increased receipts upon that line between London and the Western termini of it. As each parish is held entitled to rate for the earnings thereon—as for example, Croydon, for all that is earned therein, it is clear that none of the other parishes on the line can rate for the tendency of the line situate in them to make the earnings in Croydon. The earning is profit, and if the whole profit in Croydon is rated there, and the tendency to create that profit is rated elsewhere, the same profit would be in effect rated twice, which is unlawful: also it is clear, that no tendency to create profit is rateable; no tenant would pay rent for a tendency to profit unless it resulted in profit; and certainly no tenant of the part of the line in Dorking would pay rent to increase the profit of some other tenant of some other part of the line as was mentioned in the case of Regina *v.* The Newmarket Railway Company last term.

The annuity paid for the purchase of the line is no evidence of the rateable value where the profit is ascertained. It may afford a distant presumption when the profit is unknown; but, as a general rule, the costs of the production, or the price paid for the purchase, whether it be a sum or an annuity, is immaterial to show the rateable value. The question is, what rent would a tenant pay for it from year to year when the rate is made? and in considering that, the tenant would disregard the cost price: it is also clear, that the profit during the year in which the rate is made is a material fact for the guidance of the parish in making the rate, and they must use the latest information and adapt the rate thereto [15 Q. B. Rep. 367].

In Regina *v.* The South-Eastern Railway Company, 21 L. J. Mag. Cas. p. 146, the rate was made in November, based on a calculation of profit, founded on the Half-yearly return, down to the preceding June, and in the interval between June and November, the Company had expended £100,000 on their plant, and claimed an allowance for that expense; and it was held they were entitled to it, the Court saying, that the overseers, in making a prospective rate, are to make it on the

supposed prospective value, ascertained by them as well as they can, from the latest evidence in their power as to antecedent value.

With respect to the first rate made during the lease at £41,000 per annum, it is clear that the rent which is paid at the time of the rate is presumptive evidence of the rent at which it would let at that time; and it is also clear, that whatever may be the profit from the tenement, if by reason of competition or otherwise, a higher rent could be obtained, than the profit would warrant, it is to be rated at the rent which could be obtained. But the presumption from the amount paid may be made and rebutted. Thus, if an open coal mine be let at a rent, and it be proved that the mine has become exhausted, it is not to be rated at the rent agreed for while it was productive; and so if an unopened coal mine was let at a rent agreed for on the speculation that it would prove productive, if nothing was obtained the rent would be no evidence of the rateable value. Here the rent was agreed on before the Railway was tried, upon a speculation of profit, both immediate on the line and mediate through feeding the trunk line, and if this speculation turns out a failure, the rent agreed for on that ground would be no proof of rateable value, and the presumption from the rent would be rebutted. But with respect to the first rate, it is found that the line at the time was an object of competition to several lines who would be willing to pay more than the profit would warrant, the rateable value therefore would be the rent which it would be let for under this competition; and that rent would be the rateable value of the whole line, and would be to be apportioned among the parishes on the line in proportion to the length therein.

My answer to the first question therefore is, that with respect to the first rate, a reference should be made to ascertain what rent could have been obtained for the line at the time of the rate; and with respect to the second rate, that a reference should be made to ascertain the rateable value upon the principle above described: and I have thus disposed of all that was material in the questions submitted. But as the judges differ on the questions whether a Railway can be rated for more than it produces in the parish on account of its tendency to make profit elsewhere, which is expressed by a metaphor from feeding; and on the question whether in a case for apportionment one parish in making its rate can disregard the portions of other parishes within the apportionment, and as a generality cannot be tested without a specific application, I suggest, if a case is again brought up relating to these points, it should state specifically *what is the Railway profit arising out of the parish which is liable to be rated within it.*

Mr. Justice Coleridge.—This case raises two questions upon two separate rates. The facts existing when these rates were respectively

made slightly differ; and, in considering the point to be decided on each, I will notice the difference. The defendants were an existing Company, with a line formed from London to Dover, when the Reading, Guildford and Reigate Company was incorporated by Act of Parliament for the purpose of forming a line from the Great Western Railway to the Dover Line; and the act authorized the new Company to lease their line to the Defendants.

Before the line was incorporated, the two Companies appear to have negociated as to the terms of the lease; first, it seems that the Defendants agreed to give £4:10*s.* per cent. on capital, not to exceed £600,000, and half the profits of the line. Then it was arranged to commute this for £5 : 10*s.* per cent. without any share in the profits. Ultimately, on the completion of the line, the negociations terminated in a lease for 1,000 years, at a rent of £33,000 clear of all rates and charges except income tax, and the lease also provided that the Defendants should take on themselves the payment of 4 per cent. interest on a bond debt of £200,000 incurred in making the line, amounting to £8,000; so that the Defendants were substantially to pay £41,000 a year for their occupation of the new line. The Defendants took possession under this lease, and worked the line in connection with their main line and branches. They are the sole occupiers of all these lines, and carry on exclusively thereon the business of carriers of passengers and goods.

For the distance of 341 chains, the leased line passes through the parish of Dorking, the parish officers of which, founding their assessment of the rateable value of this 341 chains upon the said sum of £41,000, which they treat as the rent of the whole line, have found that to be £2,228 : 2*s.* 6*d.*, and demanded a rate of £226 : 16*s* 3*d.*, and if the said rent is the proper criterion of tne rateable value, it is agreed that the assessment is correct.

I have had much doubt as to the meaning of the Sessions in the use of this language, if they mean that the correctness of the assessment is to depend simply on the amount of the rent, the rent being taken as the one fact exclusive and conclusive, by which as a mere matter of arithmetical calculation the rateable value is to be measured, then I should think the parish officers clearly wrong, and that the assessment could not be confirmed. The rent agreed for and paid may be always taken as evidence more or less strong, according to circumstances, of that supposed rent, from which by the statute the rateable value is to be arrived at, and being evidence on one side, if there be nothing to set against it, it may be of course conclusive. Still, it is only evidence; and when there are any other circumstances in the case to influence the inquiry, it never can be looked to solely and conclusively. Upon the best consideration I can give the case, and, as I have said, after

much doubt, I have come to the conclusion that the parish officers have relied on it as the one governing test, and, therefore, I think the rate was made on a wrong principle, and cannot be affirmed.

The second rate now brought before us is made under these circumstances :—By an Act of Parliament passed in 1852, the Defendants' undertaking and that of the Reading and Guildford and Reigate Company were amalgamated. The lease came to an end, and the latter Company was thenceforth absolutely, and for ever, to be deemed part of the original undertaking of the former Company. By the same Act the defendants were to pay to the shareholders of the Reading Line 40,000 perpetual annuities of £1 : 0*s.* 6*d.* each, making altogether £41,000, by way of commutation for the yearly rent and other sums payable under the lease.

In making the rate for 1852, after the passing of this Act, the parish officers have taken the value of the 341 chains at £5,040 : 10*s.* and assessed the defendants at £420 : 0*s.* 10*d.* Though it is not expressly stated, yet I infer from the question proposed for our opinion, that they have done this on the ground that the value is increased, simply by their now forming part, not of an independent line demised to the defendants, but an integral part of the main line. I come to this conclusion because no other change of circumstances is stated in the data for ascertaining the rateable value of the two assessments; and, as far as I understand, the facts raise a very strong presumption against any increase in the rateable value being consequent upon this change.

The annuities seem to me merely substituted for the rent as another denomination of the same amount; I do not say that the occupation in Dorking might not be more valuable by reason of the amalgamation, but there is no evidence stated to show that it is so, and the presumption is against it from the equality of the rent and the annuities. This rate then only adds to the faulty principle in which the first has been made, and therefore, I think, cannot be affirmed. I answer therefore the first question as to both rates in the negative. I understand the second and third questions to be intended to raise three points: first, must the assessment be made only on the net profits earned by the passage of goods and passengers over the land occupied in Dorking, and must any additional value which the occupation in truth may have as increasing the traffic on the main land be excluded?—secondly, may any additional value which the occupation of the land in Dorking may have by reason of the amalgamation of the two lines be included in the assessment?

These two questions, I presume, were framed with a view to the different circumstances under which the two rates were made in respect of the amalgamation. My answers to these questions will be this: nothing is to be excluded, which I do not say has a tendency to add to, for of this no notice can be taken, but which actually adds to

the value of the occupation. For the rate is to be regulated in amount by that value, and it is a principle which I believe to be established by numerous decisions, that the inquiry is not so much where the profits of the occupation are produced, as whether any alleged profits are so directly referable to as properly to be considered parts of the profit of the occupation, or to adopt the words of Mr. Cripps in his sensible essay on the subject,—" the rateable value within the parish may depend on matter without the parish." I am not aware that this conflicts with any decisions. The principle was first laid down and acted upon in regard to Railways in the Queen *v.* The London and South Western Railway, 1 Q. B. Reports, page 585, and as regards them that case has been a governing authority ever since, from which I should be very sorry to depart. As I understand the two Tilehurst Cases, 6th Q. B. Reports, 206, and 15th Q. B. Reports, 1085, nothing was decided in either that at all breaks in upon it, and I certainly intend to adhere to both of those decisions. The principle indeed was well established as early as the New River Case, 1st Maule and Selwyn, page 503, and I have long considered it as well settled that we are to apply the same principles to the rating of occupiers of Railways as of any other property, though the application may be in some respects much more difficult, and the results not always so certainly attained. I by no means say that either the increase of the traffic on the main line, or the amalgamation of the two lines, has actually the effect of increasing the value of the occupation of the land in Dorking; that is purely a question of fact with which we have nothing to do; and if in fact from either cause such increase takes place, I am not prepared to point out to the parish officers how it is to be ascertained or measured, or how it is to be distinguished from the general profits of the occupation in the parishes on the main line; that again is not within the province of the Court.

It may well be that such increase may exist, and yet it may be so unimportant, or so difficult to ascertain, that, as mathematical accuracy in a rate is never to be expected, it may be more prudent, on the whole, for the parish officers not to pass it into the valuation.

But, subject to the effect of these remarks, which I make the more distinctly, because I consider it of great importance for this Court always to abstain from expressing opinions on mere matters of fact, and to confine itself to laying down principles in questions of rating, my answer to the second question is this, that the assessment may, and indeed should, be made with respect had both to the rent and to any increased value which the occupation in Dorking may have, by increasing the traffic on the main line; and I give the same answer, in effect, to the third question, that the respondents may and ought to take into consideration the value of the occupation, as an integral part of the main line, in both cases, as I have already stated, if they can

ascertain that the value is increased thereby, and in proportion as they find it increased thereby.

It will be observed, that in both cases I slightly alter the wording of the questions, to what I understand to be the meaning they were intended to convey. It has been objected, that these principles, when applied to Railways, may lead to double rating; because the same proprietors may be assessed in respect of the same profits in two parishes. I do not understand how the principle of rating can differ where there is one and the same occupier in two parishes from where they are two or more occupiers. If the occupier be the same, the properties are necessarily different in respect of which he is rated, and for this purpose he must be considered as a distinct person in each parish in which he occupies. In each the overseers will rate him in respect of the property in their parish, and they will estimate its value by what it produces, not merely there, but anywhere. If the profits of some other land in his occupation, in another parish, are mixed up with what the land in these parishes produces, that ought to be the ground of a deduction from the assessment, and if not made, the rate may be excessive in amount. It may be impossible to do this with a mathematical accuracy, but to do it is the business of the parish officers, in the first instance, and the sessions in the second, but never of this Court.

If in the case of the New River, the parish officers of Islington should assess the Company, looking only at the total profits received in their parish, and making no separation of, or allowance for, that share which was properly referable to Amwell, and rateable there, they would over-rate, and an appeal would lie; but this would be no ground for diminishing the rate in Amwell, for the excess in Islington ought to have been appealed against: if it has been, we must presume redress has been afforded; if it has not, the Company has acquiesced. Either way, the parish officers of Amwell cannot be affected by the course pursued by those of Islington.

How can that be distinguished from this. The land and the water have a rateable value in Amwell, considered merely as such, but it is small. They contribute, however, with the land and water elsewhere, to produce great profits, which are reaped, as it were, in Islington, and they are rated for the amount of this contribution in Islington, where there is also land and water, and where the great mass of the profits is ostensibly produced, but the overseers there ought to separate from the portion on which they are to rate the portions which are really earned by the land and water in Amwell and the other parishes intervening; so here, the land in Dorking has *per se* a rateable value, but it is said to contribute to produce, with other land in the other parishes, great profits at the London Terminus of their main line, and the occupier in Dorking has the contribution included in the rate on

his land in Dorking, which therefore ought not to contribute to the rate in any other parish. Could the exact amount of that contribution be ascertained easily, not a doubt could exist that such rating was on a fair principle; but the difficulty of ascertaining the amount surely can make no difference in the principle. To clear up that difficulty, whatever it may amount to, is not the province of this Court, but of an accountant. Under these circumstances, therefore, it will be necessary, in my opinion, to send both rates to an arbitrator, to ascertain the proper amount, according to the principles I laid down.

I am desired by LORD CAMPBELL to read his Judgment: he says:—

It seems to me most convenient to begin with the second question submitted to us in this case, and I am of opinion that the liability of the appellants to be assessed to the relief of the poor in the parish of Dorking in respect to the portion of the Reading Line in that parish, cannot be confined to the net profit derived by the appellants from the traffic passing through that parish. They are only to be assessed in that parish in respect of property occupied by them in that parish, but its value in the parish may be enhanced by circumstances existing out of the parish. The appellants say truly that they are not to be rated in the parish for profits made elsewhere. I wish implicitly to abide by what is called the "parochial principle" of rating. But upon that principle, we must see of what value the property rated in the parish is to the occupiers; and this is not necessarily determined by the pecuniary receipts for the use of it within the parish. The rent that was paid by the appellants is strong evidence that it was of greater value to them, than the mere net profit from traffic upon it. We have an express admission, that "the Reading Line brings a great deal of additional traffic to the main line, and that they derive benefit from the Reading Line, as a feeder to the main line, in respect of traffic conveyed upon that line;" and that "the Reading Line, if in the market, might be an object of competition between the South-Eastern Company and other Railway Companies, the traffic on the main lines of which would be increased by the possession and control of the Reading Line." Therefore plus the net profit derived from the traffic passing through the parish of Dorking the appellants do derive a profit from the occupation of the portion of the line in that parish. But it is said that in respect of this last profit, they ought only to be assessed in the parishes through which the main line passes. I am of a contrary opinion. This profit, although not received for the traffic upon the line in the parish of Dorking, originates from the occupation by the appellants of land in the parish of Dorking, and, if they are assessed in that parish in respect of this profit, in estimating their profits in the parishes through which the main line passes, there ought to be a deduction in respect of what is paid for the line which is worked as a feeder to the main line. This calculation, though diffi-

cult, may be made upon the data which are accessible, and is not more difficult than calculations which must be made in railway rating where stations and inclined planes in one parish affect the traffic in another parish. Adhering to the parochial principle, I inquire of what value the land rated is to the occupier. Of this value, the rent which he is willing to pay for the land affords evidence; and from any profit which he indirectly makes from it out of the parish part of the rent which he pays for it in the parish is to be regarded as a deduction. At the Bar it was hardly denied that this would be the result if the two Railways belonged to different Companies, and if the Company whose Railway is fed were to pay a regular and fixed annual sum to the Railway Company whose Railway is the feeder. But I do not see how it should make any difference to the parish of Dorking that both lines are occupied by one Company, and are worked as one concern. The advantage derived from the occupation of the portion of the line in that parish is still the same, although the process by which the amount of that advantage is to be calculated is changed. I adhere to the rule of rating which I laid down in The Queen *v.* The Newmarket Railway Company, which I there attempted to support and illustrate. This, I think, is in entire harmony with our decision in Regina *v.* The Great Western Railway Company, 15 Q. B. 379. In many cases the supposed advantage derived by a Railway Company from a portion of a railway in a particular parish bringing passengers and goods to another portion out of the parish, may be almost inappreciable, and I would earnestly dissuade parishes from ever making any claim under this head, unless where upon clear evidence the claim can in point of fact be established.

In answer to the third question I say, that the respondents are not entitled to treat the Reading Line as an integral part of the South-Eastern Railway, so as to depart from the parochial principle, but they are entitled to consider, in the assessment, the value of the Reading Line to the appellants beyond the traffic passing down the parish of Dorking. In answer to the first question, I cannot say that the rent under the lease, or the annuity payable under the last act of parliament, is necessarily the criterion of the rateable value; and therefore, according to the arrangement agreed upon between the parties, if this should be our opinion, the matter must go back to the quarter sessions or to an arbitrator, to determine the proper amount of assessment in conformity with the opinion pronounced by the majority of the Court upon the second and third questions.

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